

Notice of Allowability

Application No.

10/796,907

Examiner

Tekchand Saidha

Applicant(s)

GRAMATIKOVA ET AL.

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/16/2006.
2. ☒ The allowed claim(s) is/are 38,61,65,66,83,84,93,94,98,165 and 234-255.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 4/9/04, 6/1/04 & 1/21/05
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Notice of Allowability

1. Applicant's claim for domestic priority under 35 U.S.C. 119(e), filed 4/19/2002, is acknowledged.
2. Acknowledgement is made of the drawings filed on 3/8/2004.
3. Applicants' election of Group II, claims 38, 61, 65, 66, 83, 93, 94, 98, 102 & 104 with partial traverse and amendment filed 10/16/2006 is acknowledged.

The traversal is on the grounds that the Patent Office rejoin Group VIII to the elected group II. Group VIII claim 100 is directed to an array comprising polypeptide of claim 61 or SEQ ID NO: 2. This is not found to be persuasive because an array of polypeptides comprises several polypeptides not one as encompassed by claim 100. Further, during a telephone interview with Gregory P. Einhorn, Applicants' representative, on November 17, 2006, it was indicated that claims 38, 61, 65, 66, 83, 84, 93, 94, 98, 165 & 234-255 will be allowed provided all other non-elected claims as well as claims drawn to antibodies (claim 102 & 104) be cancelled.

In view of Applicants' representative acceptance to the proposed cancellation of claims, Applicants' traversal to the restriction requirement is now moot.

4. Claims 38, 61, 65, 66, 83, 84, 93, 94, 98, 100, 102, 104, 105, 107, 110, 111, 113, 114, 123, 153, 158, 165, 169, 175, 178, 182, 183, 197, 200, 205, 212, 227, 229-231 & 234-255 are present in this application.

5. Claims 38, 61, 65, 66, 83, 84, 93, 94, 98, 165 & 234-255 are allowed, subject to the following Examiner's Amendment.

6. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure

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consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Gregory Einhorn on November 17, 2006.

Cancel claims 100, 102, 104, 105, 107, 110, 111, 113, 114, 123, 153, 158, 169, 175, 178, 182, 183, 197, 200, 205, 212, 227 and 229-231, without prejudice.

7. The following is an examiner's statement of reasons for allowance:

This Application provides a phospholipase sequences, including the elected sequence of SEQ ID NO: 2, encoded by the nucleic acid sequence of SEQ ID NO: 1. A process of producing the enzyme recombinantly is described. The closest prior art of record is a phosphatidyl-degrading phospholipase C from *Bacillus thuringiensis* [Accession No. Q52864] described in Curr. Microbiol., 37: 245-250 (1998) by Loevgren et al. (cited in Applicants' IDS). Accession No. Q52864 is 82.6% identical to Applicants' protein sequence of SEQ ID NO: 2, which does not anticipate or make obvious the claimed invention (see the enclosed sequence search alignment between Applicants' SEQ ID NO: 2 and prior art sequence of Accession No. Q52864).

8. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tekchand Saidha whose telephone number is (571) 272 0940. The examiner can normally be reached on 8.30 am - 5.00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy can be reached on (571) 272 0928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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